

FIRESTONE TIRE AND RUBBER COMPANY OF THE PHILIPPINES, PETITIONER, VS. CARLOS LARIOSA AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

G.R. No. 70479, February 27, 1987

Ponente: FERNAN, J.

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FERNAN, J.:

In this petition for certiorari, petitioner Firestone Tire and Rubber Company of the Philippines [Firestone for brevity] assails the decision of public respondent National Labor Relations Commission which ordered the reinstatement without backwages of Carlos Lariosa, a dismissed tire builder of petitioner, as having been rendered with grave abuse of discretion amounting to lack of jurisdiction.

The facts are as follows:

Carlos Lariosa started working with Firestone on January 3, 1972, as a factory worker. At the time of his dismissal, he was a tire builder.

At around 2:00 o'clock in the afternoon of July 27, 1983, as he was about to leave the company premises, Lariosa submitted himself to a routine check by the security guards at the west gate. He was frisked by Security Guard Ambrosio Liso [Lizo] while his personal bag was inspected by Security Guard Virgilio Olvez. In the course of the inspection, sixteen [16] wool flannel swabs, all belonging to the company, were found inside his bag, tucked underneath his soiled clothes.

As a result of the incident, Firestone terminated Lariosa's services on August 2, 1983, citing as grounds therefor: "stealing company property and loss of trust." [1] Firestone also filed a criminal complaint against him with the Rizal province fiscal for attempted theft [I.S. No. 83-436-M]. [2]

Lariosa, on the other hand, sued Firestone before the Ministry of Labor and Employment for illegal dismissal, violation of Batas Pambansa Blg. 130 and its related rules and regulations, and damages. The Labor Arbiter, in his decision dated May 8, 1984, found Lariosa's dismissal justified. [3] However, on appeal, the National Labor Relations Commission on December 28, 1984 reversed the decision of the Labor Arbiter [with one commissioner voting the affirmance] and held that the dismissal of Lariosa was too severe a penalty. It therefore ordered Lariosa's reinstatement but without backwages, the period when he was out of work to be considered a suspension. [4]

Petitioner Firestone, in this special civil action certiorari, contends that the NLRC erred in not dismissing Lariosa's appeal for being late, in finding that Lariosa was not accorded due process and in reversing the Labor Arbiter.

We shall deal first with the timeliness of the appeal. It is admitted that Lariosa filed his appeal on June 7, 1984 or after the lapse of fourteen days from notice of the decision of the Labor Arbiter. Article 223 of the Labor Code clearly provides for a reglementary period of ten days within which the appeal of a decision of the Labor Arbiter to the NLRC. The ten-day period has been interpreted by this Court in the case of *Vir-jen shipping and Marine*

Services, Inc. vs, NLRC, G.R. Nos. 58011-12, July 12, 1982, 115 SCRA, 347, 361, to mean ten "calendar" days and not ten "working" days. However, the "Notice of Decision" which Lariosa's lawyer received together with a copy of the arbiter's decision advised them that an appeal could be taken to the NLRC within ten "working" days from receipt of the said decision.[5]

Mindful of the fact that Lariosa's counsel must have been misled by the implementing rules of the labor commission and considering that the shortened period for appeal is principally intended more for the employees's benefit, rather than that of the employer, We are inclined to overlook this particular precedural lapse and to proceed with the resolution of the instant case.

A review of the record shows that Lariosa was indubitably involved in the attempted theft of the flannel swabs. During the investigation called by the company's industrial relations manager Ms. Villavicencio on July 28, 1983, or one day after the incident, Security Guards Liso and Olvez contradicted Lariosa's bare claim that he had simply overlooked that he had earlier placed them inside his bag after they were given to him by his shift supervisor while he was busy at work. Guard Olvez stated that they were for "home use". And when he requested Lariosa to stay behind while he reported the matter to the authorities, Lariosa refused and hurriedly left the premises and boarded a passing jeepney.[6]

From the records, it is likewise clear that Firestone did not act arbitrarily in terminating Lariosa's services. On the contrary, there are transcripts to prove that an investigation of the incident was promptly conducted in the presence of the employee concerned, the union president and the security guards who witnessed the attempted asportation. Records also belie the allegation that Lariosa was shown his walking papers on the very day of the incident. The latter Ms. Villavicencio to Lariosa dated August 1, 1983 informing the latter of his dismissal effective August 2, 1983 conclusively shows that he was discharged only August 2, 1983, after an investigation was held to ventilate the truth about the July 27 incident.[7] Thus, we cannot agree with the NLRC's conclusion that even if Firestone had found substantial proof of Lariosa's misconduct, it did not observe the statutory requirements of due process.

There is no gainsaying that theft committed by an employee constitutes a valid reason for his dismissal by the employer. Although as a rule this Court leans over backwards to help workers and employees continue with their employment or to mitigate the penalties imposed on them, acts of dishonesty in the handling of company property are a different matter.[8]

Thus, under Article 283 of the Labor Code, an employer may terminate an employment for "serious misconduct" or for "fraud or willful breach by the employee of the trust reposed in him by his employer or representative."

If there is sufficient evidence that an employee has been guilty of a breach of trust or that his employer has ample reasons to distrust him, the labor tribunal cannot justify deny to the employer the authority to dismiss such an employee.[9]

As a tire builder, Lariosa was entrusted with certain materials for use in his job. On the day in question, he was given two bundles of wool flannel swabs [ten pieces per bundle] for cleaning disks. He used four swabs from one pack and kept the rest [sixteen pieces] in his "blue travelling bag." [10] Why he placed the swabs in his personal bag, which is not the usual receptacle for company property, has not been satisfactorily explained.

If Lariosa, by his own wrongdoing, could no longer be trusted, it would be an act of oppression to compel the company to retain him, fully aware that such an employee could, in the long run, endanger its very viability.

The employer's obligation to give his workers just compensation and treatment carries with it the corollary right to expect from the workers adequate work, diligence and good conduct.[1]

In view of the foregoing, We rule that Firestone had valid grounds to dispense with the services of Lariosa and that the NLRC acted with grave abuse of discretion in ordering his reinstatement. However, considering that Lariosa had worked with the company for eleven years with no known previous bad record, the ends of social and compassionate justice would be served if he paid full separation pay not reinstatement without backwages as decreed by the NLRC.[12]

WHEREFORE, the petition is granted. The decision of the National Labor Relations Commission dated December 28, 1984 is reversed and set aside. Petitioner Firestone Tire and Rubber Company of the Philippines is directed to pay its dismissed worker Carlos Lariosa the separation pay to which he may be entitled under the law, or any collective bargaining agreement or company rules or practice, whichever is higher.

SO ORDERED.

Alampay, Gutierrez, Jr., Paras, Padilla, and Bidin, JJ. , concur.

Cortes, J., no part, was not yet in the Supreme Court when this case was deliberated upon.

[1] Rollo, p. 43.

[2] Rollo, p. 82.

[3] Rollo, p. 27.

[4] Rollo, p. 20-21.

[5] Rollo, p. 88.

[6] Rollo, p. 43.

[7] Rollo, p. 42-43.

[8] Metro Drug Corporation vs. NLRC, G.R. No. 72248, July 22, 1986, 143 SCRA 132, citing Dole Philippines, Inc. vs. NLRC, G.R. No. 55413, July 25, 1983, 123 SCRA 673.

[9] Philippine Geothermal, Inc. vs. NLRC, G. R. Nos. 55249-50, October No. 19, 1982, 117 SCRA 692, 695; Reynolds Philippine Corp. vs. Eslova, G.R. No. L-48814, June 27, 1985, 17 SCRA 259.

[10] Rollo, p. 93.

[11] Jacinto vs. Standard-Vacuum Oil Co., 70 Phil. 501; San Miguel Corporation vs. NLRC, G.R. No. 56554, July 20, 1982, 115 SCRA 329.

[12] Engineering Equipment Inc. vs. NLRC, G.R. No. 59221, December 26, 1984, 133 SCRA 752; National Service Corporation vs. Leogardo, Jr., G.R. No. 64296, July 20, 1984, 130 SCRA 502.

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